IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MR. JUSTICE K.PADMANABHAN NAIR

MONDAY, THE 1ST OCTOBER 2007 / 9TH ASWINA 1929

MFA.No. 365 of 2002(C)

WCC.12/1997 of W.C.C.,KOTTAYAM
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APPELLANT: APPELLANT/2ND OPPOSITE PARTY:

SMT. SHYAMALA JAYACHANDRAN,
PARTNER, M/S. JASS INDUSTRIES,
NEELAMPEEROOR.

BY ADV. SRI.BECHU KURIAN THOMAS

RESPONDENTS: RESPONDENTS/APPLICANT & 1ST OPPOSITE PARTY:
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1. GEETHAKUMARI, W/O. VIJAYAN NAIR,
(PUTHUVAYALIL, NEELAMPEEROOR P.O.,
ALAPPUZHA) NOW RESIDING AT THARAYIL HOUSE,
MANGANAMKUZHY, MANGANAM P.O., KOTTAYAM.

2. NARAYANAN THAMPI, PARTNER,
M/S. JASS INDUSTRIES,
NANADATH HOUSE, NEELAMPEROOR.

BY ADV. SRI.MATHEW JOHN (K)
SRI.BABY THOMAS

THIS MISC. FIRST APPEAL HAVING BEEN FINALLY HEARD ON 01/10/2007 , THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

MFA NO. 365/2002

ORDER ON CMP NO. 1887/2002 IN MFA NO. 365/2002

DISMISSED.

01/10/2007 SD/- (K.PADMANABHAN NAIR, JUDGE)

// TRUE COPY //

PA TO JUDGE.

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K.PADMANABHAN NAIR, J.

M.F.A. No. 365 of 2002

Dated, this the 1st day of October, 2007

J U D G M E N T

The second opposite party, who is the employer, in W.C.C. No. 12/1997 on the file of Commissioner for Workmen's Compensation, Kottayam is the appellant herein. The appeal is filed against the order passed by the Deputy Labour Commissioner, by which the appellant was directed to pay an amount of Rs. 49,263/- as compensation. The first respondent was an employee working in the factory owned by the appellant. On 16/06/1996, she met with an accident and lost the tips of right index finger, middle finger and ring finger. She filed an application claiming compensation of Rs.1,00,000/-. It is averred that she was getting a monthly wage of Rs. 2,500/- and was aged at 42 years on the date of accident. The appellant contested in the matter. It was contended that the 1st respondent was having a poor eye sight and was wearing spectacle. She disobeyed the specific instructions given by the supervisor to wear spectacles while working on the machine and also not to put her hands inside the machine. It was contended that the machine was an automatic one and it was not necessary to

put hands inside the machine. It was also contended that the appellant was given only Rs. 24/- per day as she was a daily wager. The averments that she was getting an amount of Rs. 2,500/- per month and her age were disputed. The Deputy Labour Commissioner found that the appellant was getting an income of Rs. 2,000/- per month. It was found that as a result of injury sustained, she suffered disability of 23% and she was aged 42. Accordingly, the appellant was directed to pay compensation of Rs. 49,263/- with 12% interest from the date of accident till the date of realization. Challenging that order, this appeal is filed.

2. Learned counsel appearing for the appellant has argued that the 1st respondent is not entitled to any amount as compensation. It is argued that she willfully disobeyed the safety instructions given by the supervisor and as such, she is not entitled to get any compensation. It is argued that the 1st respondent filed a replication, but in the replication the contention of the appellant in the written statement that the 1st respondent willfully disobeyed the instructions of the supervisor was not denied. It was also argued that the manager gave evidence regarding the willful disobedience of the instructions and on that ground alone the

application was liable to be dismissed. It is also contended that the burden is on the applicant to prove her income and apart from the interested testimony given by the petitioner, there is no other evidence. It is argued that the respondents did not even examine any of the co-workers and relying on a stray sentence in the deposition of appellant regarding wages of the partners. The Workmen Compensation Court accepted the contentions of the respondent. It is argued that the percentage of disability fixed is not correct and the direction to pay interest from the date of accident is also illegal.

3. It is true that in the written statement, the appellant had raised a contention that the 1st respondent disobeyed safety instructions given by the supervisor. It is also true that there is no specific denial of that contention on replication filed by the 1st respondent. The manager, gave evidence to the effect that the respondent was specifically instructed to wear spectacles and also not to put her hands inside the machine. The manager produced the enquiry report given by the Supervisor, but the person who prepared the report was not examined. Further there is nothing on record to show that there was specific written

instructions, issued by the employer regarding the safety precautions to be taken by each and every employee working in the factory. In the absence of such positive evidence, it is not possible to decide the case based on the report stated to have been given by the supervisor. The status of the 1st respondent is admitted. So I find that the 1st respondent sustained an employment injury and she is entitled to get compensation.

4. The next question arising for consideration is the income. The file shows that the 1st respondent produced a ration card, but the same was not marked in evidence, the only evidence available that of the petitioner-1st respondent alone. The appellant adduced evidence to show that the 1st respondent is being paid daily wages @ Rs. 24/-. Since the burden is on the appellant, the Deputy Labour Commissioner has not justified in fixing the income @ Rs. 2,000/- per month. It should have been fixed @ 1,500/- per month because for a daily wages employee working in a factory will get at least an amount of Rs. 50/- per day. So I fix the income of the 1st respondent @ Rs. 1,500/- per month. The Deputy Labour Commissioner, fixed disability to 9+7+5, for the middle finger disability is only 7%, so total disability is 21%. I do not find any

reason to disbelieve the age. The compensation due to the petitioner is re-fixed as

1500 x 60/100 x 178.49 x 21/100 = Rs. 33,734.50 and rounded to Rs. 33,735/-. The Deputy Labour Commissioner had directed to pay interest from the date of accident. That direction is not correct in view of the principles laid down by the apex court in **National Insurance Company Ltd. Vs Mubasir Ahmed,** (2007(3) KLT 26). The Supreme Court has held that starting point is the completion of one month from the date when it fell due and it cannot be the date of accident. It is further held that it has to be taken from the date of adjudication. In this case, adjudication is made on 01/08/2001. So the interest will accrue only on completion of one month from 01/08/2001. If the appellant had not deposited that amount within one month from that date, the 1st respondent is entitled to claim interest from 01/09/2001 till the date of deposit. If the amount was deposited within one month from the date of adjudication, the appellant is not liable to pay interest. This Miscellaneous First Appeal is disposed of in the following manner :-

The compensation due to the 1st respondent is re-fixed at Rs. 33,735/- with 12% interest from 01/09/2001 till the date of

deposit. Any excess amount deposited by the appellant shall be refunded to them.

(K.PADMANABHAN NAIR, JUDGE.)

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